

## Article 2.

### State Administration.

#### **§ 18B-200. North Carolina Alcoholic Beverage Control Commission.**

(a) Creation of Commission; compensation. – The North Carolina Alcoholic Beverage Control Commission is created to consist of a chairman and two associate members. The Commission shall be administratively located within the Department of Public Safety but shall exercise its powers independently of the Secretary of Public Safety. The chairman shall devote his full time to his official duties and receive a salary fixed by the General Assembly in the Current Operations Appropriations Act. The associate members shall be compensated for per diem, subsistence and travel as provided in Chapter 138 of the General Statutes.

(b) Appointment of Members. – Members of the Commission shall be appointed by the Governor to serve at his pleasure.

(c) Vacancy. – The Governor shall fill any vacancy on the Commission by appointing a successor to serve at the Governor's pleasure. If the chairman's seat becomes vacant, the Governor may designate either the new member or an existing member of the Commission as the chairman.

(d) Employees. – The Commission may authorize the chairman to employ, discharge, and otherwise supervise subordinate personnel of the Commission. The Commission shall appoint at least one employee to make investigations, hold hearings requested under G.S. 18B-1205, and represent the Commission in contested case hearings or perform any other duties authorized by Chapter 150B. (1937, c. 49, ss. 2, 3; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1963, c. 916, s. 1; 1965, c. 1102, ss. 1, 2; 1969, c. 294, ss. 1, 2; 1971, c. 872, s. 1; 1979, c. 336; 1981, c. 412, s. 2; 1983, c. 717, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 827, s. 1; 1993, c. 415, s. 3; 2014-100, s. 15.2A(d).)

#### **§ 18B-201. Conflict of interest; gifts.**

(a) Financial Interests Restricted. – No person shall be appointed to or employed by the Commission, a local board, or the ALE Branch if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. – The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. – Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member, member's spouse or any person related to the member by blood to a degree of first cousin or closer in any way financially benefits, directly or indirectly, from the transaction unless:

- (1) The member who financially benefits from the transaction or whose spouse or relative financially benefits from the transaction abstains from participating in any way, including voting, in the decision;

- (2) The minutes of the meeting at which the final decision is reached specifically note the member who is financially benefited or whose spouse or relative is financially benefited and the amount involved in each transaction;
  - (3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and
  - (4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.
- (d) Gifts Generally. – The provisions of G.S. 133-32 shall apply to the Commission and local boards.
- (e) Conflicts of Interest for the Commission. – The provisions of Article 7 of Chapter 163A of the General Statutes shall apply to the Commission.
- (f) Conflicts of Interest for Local Boards. – Except as permitted under subsection (h) of this section, a local ABC board member shall not knowingly use the local ABC board member's position on the board in any way that will result in financial benefit to the local ABC board member, the local ABC board member's spouse, any person related to the local ABC board member by blood to a degree of first cousin or closer, or any business with which the local ABC board member is associated.
- (g) For purposes of subsection (f) of this section, "business with which associated" shall have the same meaning as in G.S. 163A-152(7). For purposes of this section, "financial benefit" shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.
- (h) Notwithstanding subsection (f) of this section, a local ABC board member may participate in an action of the local ABC board under any of the following circumstances except as specifically limited:
- (1) The financial benefit that accrues to the local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that is accrued as a member of a profession, occupation, or general class and is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
  - (2) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that would be enjoyed to an extent no greater than that which other citizens of the State would or could enjoy.
  - (3) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the local ABC board member's ability to protect the public interest and perform the local ABC board member's duties would not be compromised.
  - (4) When an action affects or would affect the local ABC board member's compensation as a local ABC board member.

- (5) Before the local ABC board member participated in the action, the board member requested and received from the ABC Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the ABC Commission shall consider the need for the local ABC board member's particular contribution, such as special knowledge of the subject matter and the effective functioning of the local ABC board.
- (6) When action is ministerial only and does not require the exercise of discretion.
- (7) When the local ABC board records in its minutes that it cannot obtain a quorum in order to take the action because the local ABC board member is disqualified from acting, the local ABC board member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.
- (i) Nothing in this section shall allow participation in an action prohibited by G.S. 14-234 or G.S. 133-32.
- (j) A local board member shall not improperly use or improperly disclose any confidential information.
- (k) A local board member shall have an affirmative duty to promptly disclose in writing to the local board any conflict of interest or potential conflict of interest. (1981, c. 412, s. 2; 1993, c. 415, s. 4; 2010-122, s. 2; 2011-145, s. 19.1(q); 2014-100, s. 17.1(xxx); 2017-6, s. 3.)

#### **§ 18B-202. Discharge upon conviction.**

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Branch, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. In addition to imposing any other penalty authorized by law, a judge may prohibit an individual convicted of a violation of this Chapter, or of any felony, from participating in any contract to enforce the ABC laws for a local board if that individual is a designated officer of an agency which holds a contract to enforce the ABC laws for a local board. A judge may also prohibit an individual convicted of a violation of this Chapter, or of any felony, from being designated as an officer that enforces the ABC law under a contract with any local board for a period of not longer than three years. (1981, c. 412, s. 2; 2010-122, s. 3; 2011-145, s. 19.1(q); 2014-100, s. 17.1(xxx).)

#### **§ 18B-203. Powers and duties of the Commission.**

- (a) Powers. – The Commission shall have authority to:
  - (1) Administer the ABC laws;
  - (2) Provide for enforcement of the ABC laws, in conjunction with the ALE Branch;
  - (3) Set the prices of alcoholic beverages sold in local ABC stores as provided in Article 8;
  - (4) Require reports and audits from local boards as provided in G.S. 18B-205;
  - (5) Determine what brands of alcoholic beverages may be sold in this State;
  - (6) Contract for State ABC warehousing, as provided in G.S. 18B-204;
  - (7) Dispose of damaged alcoholic beverages, as provided in G.S. 18B-806;

- (8) Remove for cause any member or employee of a local board;
- (9) Supervise or disapprove purchasing by any local board and inspect all records of purchases by local boards;
- (10) Approve or disapprove rules adopted by any local board;
- (11) Approve or disapprove the opening and location of ABC stores, as provided in Article 8;
- (12) Issue ABC permits, and impose sanctions against permittees;
- (13) Provide for the testing of alcoholic beverages, as provided in G.S. 18B-206;
- (14) Fix the amount of bailment charges and bailment surcharges to be assessed on liquor shipped from a Commission warehouse;
- (15) Collect bailment charges and bailment surcharges from local boards;
- (16) Notwithstanding any law to the contrary, enter into contracts for design and construction of a warehouse or warehouses and supervise work and materials used in the construction, as provided in G.S. 18B-204;
- (17) Provide for the distribution of spirituous liquor to installations of the Armed Forces of the United States within this State for resale on the installation and to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians.
- (18) Provide for the distribution and posting of warning signs to local ABC boards regarding the dangers of alcohol consumption during pregnancy as required under G.S. 18B-808;
- (19) Recognize the holder of a wine importer permit or nonresident wine vendor permit as a primary American source of supply for the wine of a winery. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States.
- (20) Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to, standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service.
- (21) Promulgate rules to establish mandatory training requirements for local board members, finance officers, and general managers. If personal attendance is required, the Commission shall not require more than four hours of training and shall provide up to two hours of training at convenient locations around the State in conjunction with ethics training.
- (22) Provide for the purchase of spirituous liquor from another ABC board by mixed beverage permittees when an ABC system becomes insolvent, closes, or is closed by the Commission and the county or municipality in which the system is located has approved the sale of mixed beverages.

(b) Implied Powers. – The Commission shall have all other powers which may be reasonably implied from the granting of the express powers stated in subsection (a), or which may be incidental to, or convenient for, performing the duties given to the Commission. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977,

c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; c. 747, s. 38; 1981 (Reg. Sess., 1982), c. 1285, s. 2; 1987, c. 136, s. 1; 2003-339, s. 1; 2006-227, s. 10; 2010-122, s. 4; 2011-145, s. 19.1(q); 2011-183, s. 20; 2011-333, s. 2; 2014-100, s. 17.1(xxx).)

#### **§ 18B-204. State warehouse.**

(a) Contracting for Private Warehouse. – The Commission shall provide for the receipt, storage, and distribution of spirituous liquor by one of the following methods:

- (1) By negotiated contract with a privately owned warehouse;
- (2) By negotiated contract with privately owned warehouses in several regions of the State. The Commission shall choose locations for the warehouses to promote efficient distribution of spirituous liquor to all local boards, to maintain control of that liquor, and to insure the Commission's supervision of warehousing procedures; or
- (3) By the construction of a warehouse, and by contracting for receipt, storage and distribution of spirituous liquor by an independent contractor, by negotiated contract or by the use of procedures for purchase and contract by State agencies, for the operation of that warehouse.

(b) Audits and Inspections. – Contracts entered into pursuant to this section shall provide the following:

- (1) That an annual audited financial statement be prepared and submitted to the Commission by the person contracting with the Commission;
- (2) That all warehouse records be available for inspection at all times by the Commission and the Department of Revenue; and
- (3) That all warehouse accounts relating to the receipt, storage, or distribution of spirituous liquor be subject to audit by the State Auditor.

(c) Emergency or Temporary Operation. – If the independent operator of a warehouse changes, or if some other occurrence results in substantially impeded distribution of spirituous liquor from a warehouse, the Commission may operate that warehouse on an interim emergency or temporary basis.

(d) Rules. – The Commission may adopt rules regarding warehouse operations, and violations of those rules by a party with whom the Commission contracts shall be grounds for termination by the Commission of a contract entered into under this section. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 3; 1987, c. 136, s. 2.)

#### **§ 18B-205. Accounts and reports required.**

(a) Accounts and Reports. – The Commission may require local boards to submit quarterly mixed beverage reports, quarterly and annual audits, monthly sales records, and any other reports or audits relating to the operations of the local ABC systems.

(b) Accounting System. – The Commission may require local boards to use generally accepted accounting standards and a chart of accounts prescribed by the Commission in the operation of ABC stores, and to record all information necessary and useful to the Commission in auditing the operation of ABC systems and administering the ABC law.

(c) Audits. – The Commission may audit the operation of any local ABC store or board, and the books of those stores and boards shall remain open to the Commission for inspection. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2.)

#### **§ 18B-206. Standards for alcoholic beverages.**

(a) Authority to Set Standards. – The Commission may set standards and adopt rules for malt beverages, unfortified wine, fortified wine, and spirituous liquor to protect the public against beverages containing harmful or impure substances, beverages containing an improper balance of substances as determined by the Commission, spurious or imitation beverages, and beverages unfit for human consumption. In setting standards and in issuing rules relating to them, the Commission may follow federal guidelines for standards of identity, labeling and advertising contained in Title 27 of the Code of Federal Regulations, or may adopt more restrictive standards.

(b) Effective Date of Standards. – A person possessing alcoholic beverages which do not meet a new standard set by the Commission shall have 60 days after the effective date of the standard to sell or otherwise dispose of those alcoholic beverages.

(c) Testing. – The Commission may test malt beverages, unfortified wine, fortified wine, and spirituous liquor possessed or offered for sale in this State to determine whether they meet the standards set by the Commission. If the Commission chooses to test an alcoholic beverage, that test may be performed by the Commission, the Commission may arrange for the State Chemist to perform the testing, or the Commission may have the testing performed in some other manner. The manufacturer of tested alcoholic beverages shall pay the costs of the test. In lieu of testing an alcoholic beverage, the Commission may rely on testing by a federal agency or an agency of another state or may accept test results from a federal agency, an agency of another state, or the manufacturer of the alcoholic beverage or his authorized agent. A manufacturer who submits test results shall also submit a fee of ten dollars (\$10.00) for each test result to cover administrative costs. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5; 1971, c. 872, s. 1; 1977, c. 70, s. 20.4; 1981, c. 412, s. 2.)

#### **§ 18B-207. Rules.**

The Commission shall have authority to adopt, amend, and repeal rules to carry out the provisions of this Chapter. Those rules shall become effective when adopted and filed pursuant to the provisions of Chapter 150B of the General Statutes. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1987, c. 827, s.1.)

**§ 18B-208. ABC Commission bonds and funds.**

(a) Issuance of Bonds. – As a means of raising the funds needed from time to time in the design, acquisition, construction, equipping, maintenance and operation of a warehouse under G.S. 18B-204(a)(3), the Commission may, with the approval of the Governor, at one time or from time to time issue negotiable revenue bonds of the Commission. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation or to make any appropriation for their payment. Revenue bonds issued pursuant to this subsection shall be repaid from the bailment surcharge as provided in subsection (b). These bonds and the income from them are exempt from all taxation within the State.

(b) Special Fund. – A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the State Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission and the retirement of bonds issued for construction of a Commission warehouse and offices. Upon payment of the bonds issued pursuant to this section, the Commission shall reduce the bailment surcharge to an amount no greater than necessary to pay operating expenses of the Commission as authorized by the General Assembly.

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with plans approved by the North Carolina ABC Commission and the Director of the Budget. The moneys in the Fund shall be expended only upon an appropriation by an act of the General Assembly. (1981 (Reg. Sess., 1982), c. 1285, s. 4; 1983, c. 761, s. 133; 1987, c. 832, s. 1; 1989, c. 800 s. 6; 2006-203, s. 13; 2014-100, s. 15.1.)

**§§ 18B-209 through 18B-299. Reserved for future codification purposes.**